IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 719 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASLAM @ BAPU NAZIR SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 719 of 2001

MR MM TIRMIZI for Petitioner No. 1

MR K.T.DAVE, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

RULE NOT RECD BACK for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 12/10/2001

ORAL JUDGEMENT

In this petition filed under Article-226 of the Constitution of India, petitioner has challenged the order dated June 27, 2001 (Annexure-'B' to the petition) passed by the externing authority i.e. Deputy Commissioner of Police, Zone VI, Ahmedabad City by which he has externed the petitioner for a period of two years from five districts i.e. Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kedha and Mehasana and also the order dated August 7, 2001 (Annexure-C to the petition) passed by the appellate Authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

2. A show-cause notice dated October 6, 2000 under Section 59 of the Bombay Police Act ('Act' for short)was issued to the petitioner, wherein, several allegations were made against him to the effect that he is extorting money from the passersby near Khetarshahbaba Dargaha, and if they oppose, rob them by giving fist blow and give threat to kill them. Purchase the articles from the traders without giving payment thereof and if they demand payment beat them, not paying fare to the rickshaw owner, if they demand fare, beat them and give threat to kill them and, therefore, according to the externing authority, activities carried out by the petitioner are detrimental to the maintenance of public order. Besides this, six cases for commission of the offences under Prohibition Act, one case under the Gambling Act and two cases under IPC are also registered against the petitioner in the year 1999 in Gomtipur and Serkez Plice Stations. Therefore, by issuing show-cause notice the petitioner was called upon to show -cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgment.

3. The petitioner replied to the said show-cause notice. The externing Authority, after considering the reply and other documents on record, passed the impugned order of externment dated June 27, 2001 in exercise of the powers conferred under Section 56(b) of the Act externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing Authority, the petitioner preferred an appeal before the appellate Authority, which was dismissed by the appellate Authority vide order dated August 7, 2001 which has given rise to the present petition.

5. Mr.M.M.Tirmizi, learned advocate for the

petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. Besides this, he also raised the contention that in the show-cause notice the alleged activities against the petitioner were of 1999 and the impugned order of externment was passed on June 27, 2001, after concluding the proceedings long back. The show-cause notice was issued on October 6, 2000 whereas the order of externment was passed on June 27, 2001 and therefore, there is a delay of about 9 months in passing the impugned order of externment which is unexplained either in the order of externment or by filing affidavit in reply. Therefore, according to the learned advocate for the petitioner the impugned order of externment suffers from the vices of non-application of mind, and is, therefore, liable to be quashed and set aside.

6. Mr.K.T.Dave, learned APP appeared for the respondent State and has opposed the petition. He however, does not disputed the factual aspect with respect to the delay of 9 months in passing the order of externment from the date of issuance of show-cause notice and, therefore, urged that the appropriate order may be passed in the facts and circumstances of the case.

7. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the order passed by the externing Authority, as well as the order passed by the appellate Authority and other papers annexed to the petition.

8. A Division Bench of this Court in the case of SANTOSH RAMPRASAD SHARMA VS. DEPUTY COMMISSIONER OF POLICE, 1992 (2) GLH 457 has held that in externing a person, which is in public interest, the authorities are expected to act promptly and if they delay the matter, the same will spell out that there is no urgent need not necessity to extern a person from a particular locality or a district. The externment orders curtail the freedom of movement of the person concerned, and, therefore, any laches on the part of the authority concerned cannot be countenanced and the benefit will go to the party concerned and on that score, the externee will be entitled to the benefit of quashing such an order of externment.

9. In the case of SITABEN M THAKORE VS. COMMISSIONER OF POLICE, AHMEDABAD AND OTHERS (SPECIAL CRIMINAL APPLICATION NO. 63 OF 1996 DECIDED ON

10.12.1996 BY THIS COURT (CORAM : N N MATHUR, J), this Court in para 13 of the judgement has observed as under:

> Thus, the inquiry under Section 59 of the Act, being of urgent nature should be held as expeditiously as possible, and in particular, only a short notice of 3 to 7 days may be given for submitting the written statement, and immediately the date should be fixed for examination of witnesses, and once examination of witnesses is begun, the same should be continued, unless the authority finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded. It is not necessary to record each and everything whatever is being stated, if in the opinion of the authority, the same is not relevant. No adjournment should be granted on the flimsy grounds of the lawyer or the externee is busy in attending the marriage or that the advocate is busy in other Court matters. These are not the grounds for adjournment. Though in the Division Bench judgment, it is expressed that the inquiry should be completed within a period of six months, it only provided an outer limit in extreme cases. No definite period of inquiry can be provided. It depends upon the facts of each case. If there is a long delay in passing the orders of externment after the issuance of show cause notice, the externment authority cannot reasonably come to conclusion that the movement or the acts of externee are causing or calculated to cause alarm, danger or harm to person or property, so as to prevent him to moving himself from certain areas.

10. Applying the aforesaid principles laid down by this Court to the facts of the present case, there is no dispute that there is a delay of nine months in passing the impugned order of externment which is unexplained either in the order of externment or by filing affidavit in reply on behalf of the detaining authority, and, therefore, the order of externment is required to be quashed and set aside.

11. On overall view of the matter, the order of externment passed by the externing authority externing the petitioner for a period of two years from five districts and the order passed by the appellate authority confirming the externment order, both are required to be quashed and set aside.

12. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned orders at Annexures-'B' and Annexure 'C' to the petition are quashed and set aside. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

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